

CENTER FOR DISABILITY ACCESS  
Raymond Ballister Jr., Esq., SBN 111282  
Russell Handy, Esq., SBN 195058  
Amanda Seabock, Esq., SBN 289900  
Zachary Best, Esq., SBN 166035  
Mail: 8033 Linda Vista Road, Suite 200  
San Diego, CA 92111  
(858) 375-7385; (888) 422-5191 fax  
amandas@potterhandy.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**Rafael Arroyo**

Plaintiff,

**v.**

**AVR San Jose Downtown Hotel  
LLC**, a Delaware Limited Liability  
Company;

Defendant,

**Case No.**

**Complaint For Damages And  
Injunctive Relief For  
Violations Of:** Americans With  
Disabilities Act; Unruh Civil  
Rights Act

Plaintiff Rafael Arroyo complains of AVR San Jose Downtown Hotel LLC, a  
Delaware Limited Liability Company; ("Defendant"), and alleges as follows:

**PARTIES:**

1. Plaintiff is a California resident with physical disabilities. He is  
substantially limited in his ability to walk. He is a paraplegic. He uses a  
wheelchair for mobility.

2. Defendant AVR San Jose Downtown Hotel LLC, a Delaware Limited

1 Liability Company owns and operates the AC Hotel by Marriott San Jose  
2 Downtown located at 350 W. Santa Clara St., San Jose, California currently  
3 and at all times relevant to this complaint.

4 3. Plaintiff does not know the true names of Defendants, their business  
5 capacities, their ownership connection to the property and business, or their  
6 relative responsibilities in causing the access violations herein complained of,  
7 and alleges a joint venture and common enterprise by all such Defendants.  
8 Plaintiff is informed and believes that each of the Defendants herein, is  
9 responsible in some capacity for the events herein alleged, or is a necessary  
10 party for obtaining appropriate relief. Plaintiff will seek leave to amend when  
11 the true names, capacities, connections, and responsibilities of other  
12 Defendants are ascertained.

#### 13 14 **JURISDICTION:**

15 4. The Court has subject matter jurisdiction over the action pursuant to 28  
16 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with  
17 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

18 5. Pursuant to supplemental jurisdiction, an attendant and related cause  
19 of action, arising from the same nucleus of operative facts and arising out of  
20 the same transactions, is also brought under California's Unruh Civil Rights  
21 Act, which act expressly incorporates the Americans with Disabilities Act.

22 6. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is  
23 founded on the fact that the real property which is the subject of this action is  
24 located in this district and that Plaintiff's cause of action arose in this district.

#### 25 26 **PRELIMINARY STATEMENT**

27 7. This is a lawsuit challenging the reservation policies and practices of a  
28 place of lodging. Plaintiff does not know if any physical or architectural

1 barriers exist at the hotel and, therefore, is not claiming that that the hotel has  
2 violated any construction-related accessibility standard. Instead, this is about  
3 the lack of information provided on the hotel's reservation website that would  
4 permit plaintiff to determine if there are rooms that would work for him.

5 8. After decades of research and findings, Congress found that there was  
6 a "serious and pervasive social problem" in America: the "discriminatory  
7 effects" of communication barriers to persons with disability. The data was  
8 clear and embarrassing. Persons with disabilities were unable to "fully  
9 participate in all aspects of society," occupying "an inferior status in our  
10 society," often for no other reason than businesses, including hotels and  
11 motels, failed to provide information to disabled travelers. Thus, Congress  
12 decided "to invoke the sweep of congressional authority" and issue a "national  
13 mandate for the elimination of discrimination against individuals with  
14 disabilities," and to finally ensure that persons with disabilities have "equality  
15 of opportunity, full participation, independent living" and self-sufficiency.

16 9. As part of that effort, Congress passed detailed and comprehensive  
17 regulations about the design of hotels and motels. But, as importantly,  
18 Congress recognized that the physical accessibility of a hotel or motel means  
19 little if the 61 million adults living in America with disabilities are unable to  
20 determine which hotels/motels are accessible and to reserve them. Thus,  
21 there is a legal mandate to provide a certain level of information to disabled  
22 travelers.

23 10. But despite the rules and regulations regarding reservation procedures,  
24 a 2019 industry article noted that: "the hospitality sector has largely  
25 overlooked the importance of promoting accessible features to travelers."

26 11. These issues are of paramount important. Persons with severe  
27 disabilities have modified their own residences to accommodate their unique  
28 needs and to ameliorate their physical limitations. But persons with disabilities

1 are never more vulnerable than when leaving their own residences and having  
2 to travel and stay at unknown places of lodging. They must be able to ascertain  
3 whether those places work for them.

4  
5 **FACTUAL ALLEGATIONS:**

6 12. Plaintiff planned on making a trip in April of 2021 to the San Jose,  
7 California, area.

8 13. He chose the AC Hotel by Marriott San Jose Downtown located at 350  
9 W. Santa Clara St., San Jose, California because this hotel was at a desirable  
10 price and location.

11 14. Due to Plaintiff's condition, he is unable to, or seriously challenged in  
12 his ability to, stand, ambulate, reach objects, transfer from his chair to other  
13 equipment, and maneuver around fixed objects.

14 15. Thus, Plaintiff needs an accessible guestroom and he needs to be given  
15 information about accessible features in hotel rooms so that he can confidently  
16 book those rooms and travel independently and safely.

17 16. On December 19, 2020, while sitting bodily in California, Plaintiff  
18 went to the AC Hotel by Marriott San Jose Downtown reservation website at  
19 <https://www.marriott.com/hotels/travel/sjcac-ac-hotel-san-jose-downtown/>  
20 seeking to book an accessible room at the location.

21 17. This website reservation system is owned and operated by the  
22 Defendants and permits guests to book rooms at AC Hotel by Marriott San Jose  
23 Downtown.

24 18. Plaintiff found that there was insufficient information about the  
25 accessible features in the "accessible rooms" at the Hotel to permit him to  
26 assess independently whether a given hotel room would work for him.

27 19. For example, Plaintiff cannot transfer from his wheelchair to a toilet  
28 unless there are grab bars at the toilet to facilitate that transfer. But the Hotel

1 reservation website simply mentions “Bathroom grab bars”. What type of grab  
2 bars are available? Shower grab bars? Toilet grab bars? This does not assure  
3 Plaintiff that there are toilet grab bars. This is critical information for the  
4 plaintiff.

5 20. As another example, Plaintiff has had tremendous difficulty with using  
6 lavatory sinks in the past because sinks were cabinet style sinks or had low  
7 hanging aprons that did not provide knee clearance for a wheelchair user to  
8 pull up and under or, alternatively, where the plumbing underneath the sink  
9 was not wrapped with insulation to protect against burning contact to his  
10 knees. Here, the Hotel reservation website provides no information about the  
11 accessibility of the sinks in the accessible guestroom.

12 21. As another example, Plaintiff needs to know that the bed has a  
13 compliant clear space next to it so he can safely transfer from his wheelchair to  
14 the bed. Here the Hotel website provides no information about the  
15 accessibility of the clear space next to the bed. Making matter worse, the  
16 photos that accompany the room descriptions states: “Images may not fully  
17 represent the room features you booked”. This meant that Plaintiff could not  
18 trust the photos that accompanied the room descriptions.

19 22. Plaintiff does not need an exhaustive list of accessibility features.  
20 Plaintiff does not need an accessibility survey to determine if a room works for  
21 him. Plaintiff, like the vast majority of wheelchair users, simply needs a  
22 handful of features to be identified and described with a modest level of detail:

- 23 • For the doors, Plaintiff simply needs to know if he can get into the hotel  
24 room and into the bathroom. This is a problem that has created  
25 tremendous problems for the Plaintiff in the past. A simple statement  
26 that the hotel room entrance and interior doors provide at least 32  
27 inches of clearance is enough to provide Plaintiff this critical piece of  
28 information about whether he can fit his wheelchair into the hotel

rooms.

- For the beds themselves, the only thing Plaintiff needs to know (and the only thing regulated by the ADA Standards) is whether he can actually get to (and into) the bed, i.e., that there is at least 30 inches width on the side of the bed so his wheelchair can get up next to the bed for transfer. This is critical information because Plaintiff cannot walk and needs to pull his wheelchair alongside the bed.
- For the desk where Plaintiff will eat and work, Plaintiff simply needs to know that it has sufficient knee and toe clearance so that he can use it. A simple statement like “the desk provides knee and toe clearance that is at least 27 inches high, 30 inches wide, and runs at least 17 inches deep” is more than sufficient. Because Plaintiff is confined to a wheelchair, he needs to know this information to determine if the desk is accessible to and useable by him.
- For the restroom toilet, Plaintiff only needs to know two things that determine if he can transfer to and use the toilet; (1) that the toilet seat height is between 17-19 inches (as required by the ADA Standards) and (2) that it has the two required grab bars to facilitate transfer.
- For the restroom sink, the Plaintiff two things that will determine whether he can use the sink from his wheelchair: (1) can he safely get his knees under the toilet? To wit: does the sink provide the knee clearance (27 inches high, 30 inches wide, 17 inches deep) and is any plumbing under the sink wrapped with insulation to protect against burning contact? The second thing is whether the lavatory mirror is mounted at a lowered height so that wheelchair users can see it. A simple statement like: “the lavatory sink provides knee clearance of at least 30 inches wide, 27 inches tall and 17 inches deep, all of the under-sink plumbing is wrapped, and the lowest reflective edge of the mirror is no more than

1       40 inches high” would suffice.

- 2       • Finally, for the shower, Plaintiff needs to know only a handful of things:  
3       (1) what type of shower it is (transfer, standard roll-in, or alternate roll-  
4       in), (2) whether it has an in-shower seat; (3) that there are grab bars  
5       mounted on the walls; (4) that there is a detachable hand-held shower  
6       wand for washing himself and (5) that the wall mounted accessories and  
7       equipment are all within 48 inches height.

8       23. This small list of items are the bare necessities that Plaintiff must know  
9       to make an independent assessment of whether the “accessible” hotel room  
10      works for him. These things comprise the basics of what information is  
11      reasonably necessary for Plaintiff (or any wheelchair user) to assess  
12      independently whether a given hotel or guest room meets his or her  
13      accessibility needs.

14      24. Other accessibility requirements such as slopes of surfaces, whether the  
15      hand-held shower wand has a non-positive shut off valve, the temperature  
16      regulator, the tensile strength and rotational design of grab bars, and so many  
17      more minute and technical requirements under the ADA are beyond what is a  
18      reasonable level of detail and Plaintiff does not expect or demand that such  
19      information is provided.

20      25. But because the Defendants have failed to identify and describe the core  
21      accessibility features in enough detail to reasonably permit individuals with  
22      disabilities to assess independently whether a given hotel or guest room meets  
23      his accessibility needs, the Defendants fail to comply with its ADA obligations  
24      and the result is that the Plaintiff is unable to engage in an online booking of  
25      the hotel room with any confidence or knowledge about whether the room will  
26      actually work for him due to his disability.

27      26. This lack of information created difficulty for the Plaintiff and the idea  
28      of trying to book this room -- essentially ignorant about its accessibility --

1 caused difficulty and discomfort for the Plaintiff and deterred him from  
2 booking a room at the Hotel

3 27. Plaintiff travels frequently and extensively, not only for non-litigation  
4 reasons but also because he is an ADA tester and actively engaged in finding  
5 law breaking businesses and hauling them before the courts to be penalized  
6 and forced to comply with the law.

7 28. As he has in the past, Plaintiff will continue to travel to San Jose area on  
8 a regular and ongoing basis and will patronize this Hotel once it has been  
9 represented to him that the Defendant has changed its policies to comply with  
10 the law and to determine if the Hotel is physically accessible as well as  
11 complying with required reservation procedures. Plaintiff will, therefore, be  
12 discriminated against again, i.e., be denied his lawfully entitled access, unless  
13 and until the Defendant is forced to comply with the law.

14 29. Plaintiff has reason and motivation to use the Defendant's Hotel  
15 reservation system and to stay at the Defendant's Hotel in the future. Among  
16 his reasons and motivations are to assess these policies and facilities for  
17 compliance with the ADA and to see his lawsuit through to successful  
18 conclusion that will redound to the benefit of himself and all other similarly  
19 situated. Thus, Plaintiff routinely revisits and uses the facilities and  
20 accommodations of places he has sued to confirm compliance and to enjoy  
21 standing to effectuate the relief promised by the ADA.

22  
23 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**  
24 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all  
25 Defendants.) (42 U.S.C. section 12101, et seq.)

26 30. Plaintiff re-pleads and incorporates by reference, as if fully set forth  
27 again herein, the allegations contained in all prior paragraphs of this  
28 complaint.



1       31. Under the ADA, it is an act of discrimination to fail to make reasonable  
 2 modifications in policies, practices, or procedures when such modifications  
 3 are necessary to afford goods, services, facilities, privileges advantages or  
 4 accommodations to person with disabilities unless the entity can demonstrate  
 5 that taking such steps would fundamentally alter the nature of the those goods,  
 6 services, facilities, privileges advantages or accommodations. See 42 U.S.C. §  
 7 12182(B)(2)(A)(ii).

8       32. Specifically, with respect to reservations by places of lodging, a  
 9 defendant must ensure that its reservation system, including reservations  
 10 made by “any means,” including by third parties, shall:

- 11           a. Ensure that individuals with disabilities can make  
 12 reservations for accessible guest rooms during the same  
 13 hours and in the same manner as individuals who do not  
 14 need accessible rooms;
- 15           b. Identify and describe accessible features in the hotels and  
 16 guest rooms offered through its reservations service in  
 17 enough detail to reasonably permit individuals with  
 18 disabilities to assess independently whether a given hotel  
 19 or guest room meets his or her accessibility needs; and
- 20           c. Reserve, upon request, accessible guest rooms or specific  
 21 types of guest rooms and ensure that the guest rooms  
 22 requested are blocked and removed from all reservations  
 23 systems.

24           *See* 28 C.F.R. § 36.302(e).

25       33. Here, the defendant failed to modify its reservation policies and  
 26 procedures to ensure that it identified and described accessible features in the  
 27 hotels and guest rooms in enough detail to reasonably permit individuals with  
 28 disabilities to assess independently whether a given hotel or guest room meets

1 his or her accessibility needs and failed to ensure that individuals with  
2 disabilities can make reservations for accessible guest rooms during the same  
3 hours and in the same manner as individuals who do not need accessible  
4 rooms.

5  
6 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**  
7 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.  
8 Code § 51-53.)

9 34. Plaintiff repleads and incorporates by reference, as if fully set forth  
10 again herein, the allegations contained in all prior paragraphs of this  
11 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,  
12 that persons with disabilities are entitled to full and equal accommodations,  
13 advantages, facilities, privileges, or services in all business establishment of  
14 every kind whatsoever within the jurisdiction of the State of California. Cal.  
15 Civ. Code §51(b).

16 35. The Unruh Act provides that a violation of the ADA is a violation of the  
17 Unruh Act. Cal. Civ. Code, § 51(f).

18 36. Defendants’ acts and omissions, as herein alleged, have violated the  
19 Unruh Act by, inter alia, failing to comply with the ADA with respect to its  
20 reservation policies and practices.

21 37. Because the violation of the Unruh Civil Rights Act resulted in difficulty  
22 and discomfort for the plaintiff, the defendants are also each responsible for  
23 statutory damages, i.e., a civil penalty. *See* Civ. Code § 52(a).

24  
25 **PRAYER:**

26 Wherefore, Plaintiff prays that this Court award damages and provide  
27 relief as follows:  
28

1 1. For injunctive relief, compelling Defendants to comply with the  
2 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
3 plaintiff is not invoking section 55 of the California Civil Code and is not  
4 seeking injunctive relief under the Disabled Persons Act at all.

5 2. Damages under the Unruh Civil Rights Act, which provides for actual  
6 damages and a statutory minimum of \$4,000 for each offense.

7 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant  
8 to 42 U.S.C. § 12205; and Cal. Civ. Code § 52(a).

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10  
11 Dated: January 12, 2021

CENTER FOR DISABILITY ACCESS

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By: \_\_\_\_\_  
Russell Handy, Esq.  
Attorneys for Plaintiff